



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,386	03/22/2004	William P. Spencer	IMGNTX.001US	1731
35938	7590	04/04/2008	EXAMINER	
Biotechnology Law Group c/o Portfolioip P.O. Box 52050 Minneapolis, MN 55402			CARR, DEBORAH D	
			ART UNIT	PAPER NUMBER
			1621	
			MAIL DATE	DELIVERY MODE
			04/04/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/805,386	Applicant(s) SPENCER ET AL.	
	Examiner DEBORAH D. CARR	Art Unit 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19 and 21-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19 and 21-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 19, 21-35 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 19, 21-48 rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 6,417,227 or WO 00/85162 or US Pat. 4,113,881 in view of IT-1302626.

US'227 teach a compound and pharmaceutical composition containing said compound to treat arthritis. Said compound is cetyl myristoleate and can be administered to humans and animals daily. See columns 2-3.

WO'162 teaches a cetylated fatty acid and pharmaceutical composition containing said compound. Said compositions contain the cetylated fatty acids in the amount of 50 to 98% w/w of the mixture.

US'881 relates to a method for relieving and inhibiting at least one of the symptoms of inflammatory rheumatoid arthritis in mammals by administering orally, topically or parenterally a therapeutically effective amount of cetyl myristoleate.

The claims differ from the reference by limiting the treatment to periodontal disease and the inclusion of specific carriers and excipient selected from the group consisting of lecithin, olive oil, and tocophenol.

However it would have been obvious to one of ordinary skilled in the art at the time the invention was made to extrapolate periodontal disease could be treated.

The compositions used in the patents supra all treat inflammation, which is the source of the diseases disclosed. Since it is known cetyl fatty acid containing compositions can be used to treat inflammation, it is obvious that these compositions cited will also treat periodontal disease cause by inflammation.

The declaration under 37 CFR 1.132 filed 8 January 2008 is insufficient to overcome the rejection of claims 19, 21-35 rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 6,417,227 or WO 00/85162 or US Pat. 4,113,881 as set forth in the last Office action because: the declaration while reciting the historical background of periodontal treatment involving anti-inflammatory substances, still does not overcome the fact that the instant compounds are treating periodontal inflammation caused by the same pathways of inflammation in arthritis.

There is no indication in the declaration that different pathways cause inflammation and the pathways that induce inflammation in psoriasis, cardiovascular or heart disease are the different than those that induce inflammation in periodontal disease.

In fact the declaration reiterates artisans have treated in the past to use anti-inflammatory compounds to treat periodontal inflammation. The fact that those trials were unsuccessful does not render the instant method of treating periodontal inflammation unobvious, especially since applicants are obviously treating the inflammation via the same pathway that the compounds use in treating arthritis.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access

Art Unit: 1621

to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deborah D Carr/
Primary Examiner
Art Unit 1621

Ddc